



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D.M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2205285
Applicant Name: Jennifer Ortega
Address of Proposal: 13558 – 39th Ave NE

SUMMARY OF PROPOSED ACTIONS

Master Use Permit for future construction of a cluster housing development of four single family residences with attached garages on a site in an environmentally critical area. A unit lot subdivision will be applied for under separate permit. Grading of more than 25 cubic yards of material in a steep slope critical area is also considered in this review.

The following approvals are required:

Environmentally Critical Areas Conditional Use - to allow recovery of development credit in a critical area in a single-family zone. SMC 25.09.260

SEPA - Environmental Determination - SMC Chapter 25.05.

SEPA DETERMINATION: ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition or
involving another agency with jurisdiction

BACKGROUND DATA

The subject property is a 32,560-square-foot parcel zoned SF-7200: Single-Family Residential, with a minimum lot size of 7200 square feet. The property is described as Lots 11 and 12, Block

1, Kenwood Division No. 1. Lots 11 and 12 are located in the Cedar Park neighborhood, which is in the far northeast corner of the city. Lake Washington is a few blocks to the east and visible from the property. The Olympic Mountains are also visible from the property to the west. Lots 11 and 12 are rectangular in shape. Each is approximately 60 feet wide by 271.6 feet deep. The westerly part of the property, about 80% of the total area of both lots, is relatively level, while the easterly 20% of the property is an area of steep slopes of 40% average slope or greater, with a maximum vertical relief of up to fifty feet. The slope is part of a large ridge that runs well to the north and south of Lots 11 and 12 and slopes downward to the east towards the lake.

Lots 11 and 12 are presently developed with a single-family residence constructed in 1949, which straddles the common lot line between the two lots. The existing structure is located roughly in the center of the property, slightly closer to the southerly lot line than the northerly lot line. The area west of the house is a large level yard. Some level area continues to the east of the house, particularly on Lot 12, before dropping off in the steep slope area. The level portion of Lots 11 and 12 presently contains grass and a small boxwood hedge, with larger trees and shrubs lining the north and south sides of the property. There is a large hedge, about five feet in height, along the west side near 39th Avenue Northeast. The steep slope area on the easterly part of the lot is more heavily vegetated with a variety of trees and shrubs.

The zoning to the north and south of Lots 11 and 12, and to the west of the 39th Avenue Northeast right-of-way, is SF-7200: Single-Family Residential, with a minimum lot size of 7200 square feet. The zoning to the east, across the undeveloped 40th Avenue Northeast street right-of-way, is SF-9600: Single-Family Residential, with a minimum lot size of 9600 square feet. Development in the vicinity is almost exclusively single-family residences, with the exception of Cedar Park Elementary School about a block to the southwest of Lots 11 and 12. Lot size in the surrounding blocks is mixed, with some lots, including several near the subject property, ranging from 16,000 to nearly 40,000 square feet in area. The majority of the lots in the immediate vicinity, however, particularly in the SF-7200 zone to the north, south, and west of Lots 11 and 12, have areas in the 7200 to 8,200 square-foot range. About 37 lots out of a total of 167 lots within a 600-foot radius of the subject property (or 22% of the total number of lots), have areas less than the minimum lot area of the zone. About fourteen of these undersized lots are within the SF-7200 zone and the others are in the SF-9600 zone to the east and southeast of Lots 11 and 12. Many nearby lots in the same block and the blocks north, south, and east of the site are at least partly within a steep slope critical area.

Proposal

The proposal is to demolish the existing house straddling Lots 11 and 12 and cluster four proposed new residences on the two existing lots. The applicants have further stated their intent to apply for a unit lot subdivision (authorized under Seattle Municipal Code (SMC) Section 23.24.045) of the two existing lots into four new unit lots, but the unit lot subdivision is not part of the current proposal. According to the survey provided by the applicant, the total area of Lots 11 and 12 is about 32,560 square feet. This is enough area for four new lots meeting the lot area standards of the SF-7200 zone. However, about 6,618 square feet of the property is within the steep slope critical area. Another 2,828 square feet of property is within the 15-foot steep slope

buffer area adjacent to the top of the slope. The steep slope area and its buffer may not, as a matter of right, be counted toward the minimum lot area requirement. If this area is subtracted, the total remaining area outside of the steep slope critical area is about 23,114 square feet, or enough area for three new lots containing three new houses. Due to the high percentage of area of Lots 11 and 12 that is within the steep slope critical area, the applicants have requested administrative conditional use approval to recover development credit for four houses on the property instead of the three permitted outright and to transfer development credit from the steep slope critical area and its buffer to the level area of Lots 11 and 12 in the center and westerly part of the property. Clustering of the four proposed houses is requested in that the houses would be closer together at some points than is permitted by strict application of the yard standards of the Land Use Code and would constitute four houses on two existing lots pending approval of a future unit lot subdivision. The unit lot subdivision contemplated, if approved, would also establish one unit lot that is smaller than the minimum lot size in the SF-7200 zone, although the other three proposed unit lots would exceed the minimum lot size.

The proposed new houses would be two-story structures with attached two-car garages similar in size and height to many nearby homes, particularly those built in recent years and located on the ridge overlooking Lake Washington that includes Lots 11 and 12. The proposed houses range in size from 2,337 square feet to 3,585 square feet. Total proposed lot coverage of all new structures would be about 7,485 square feet or about 22.9% of the total area of Lots 11 and 12. Total impervious surface, including driveways and walkways together with building footprints, would be about 11,465 square feet, or 35.2% of the total area of Lots 11 and 12. All land disturbing activity for the proposed construction would occur outside the steep slope area and required 15-foot buffer, except for a small area in the northeast corner of the proposed footprint for the second house, which would extend a few feet into the buffer. No trees are proposed to be removed. However, it is known that up to 28 trees, according to information supplied by neighbors, were removed from Lots 11 and 12 prior to submittal of this development application. While it has been determined that no trees were removed within the steep slope critical area, there is evidence of land disturbing activity on the steep slope stemming from deposit of tree cutting debris in excess of 25 cubic yards. The applicants have proposed a revegetation plan for the steep slope that will be considered in the environmental review (SEPA) portion of this decision.

Public Comment

Forty-one comment letters were received during the public notice and comment period for the proposed project (in some cases more than one comment letter was sent by the same party). The comments primarily express concern about the effect of the proposed development on the steep slope critical area, including potential increased risk of slides and concerns about drainage, as well as the impact of the proposal on existing neighborhood character. The comments about neighborhood character reflected concern that the clustering of four houses on Lots 11 and 12 would not be compatible with a neighborhood of individual houses on separate lots, within a neighborhood of modest density. Some comments expressed concern about increased traffic from addition of four houses to the number built along 39th Avenue Northeast. Quite a few of

the comments expressed concern about the cutting of the numerous trees once growing on the site, which apparently included many “mature” Douglas firs.

Environmentally Critical Areas Regulations

Seattle Municipal Code (SMC) Sections 25.09.040 and 25.09.060 establish standards that apply to all development within designated Environmentally Critical Areas, which includes submittal requirements for verifying the location of all such areas. SMC Section 25.09.180 provides specific standards for all development on steep slopes and steep slope buffers on existing lots, including the general requirement that development shall be avoided in steep slope areas whenever possible and, if avoidance of development in the steep slope areas is not practicable, then a standard applies limiting grading, developmental activity, and other land disturbing activity to a maximum of 30% of the area measured as steep slopes of 40% or greater. All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of DPD.

Conditions imposed as a means of compliance with the ECA ordinance are non-appealable. General requirements and standards described in Section 25.09.060 include the recording of conditions of approval and of the identified ECA areas in a permanent covenant with the property, as well as specific construction methods and procedures.

Section 25.09.240 D states that critical areas and their required buffer areas receive no development credit for use in calculating the number of lots permitted. If the steep slope and buffer areas, comprising a total of 9,446 square feet of existing Lots 11 and 12, are subtracted from the total area of Lots 11 and 12, only 23,115 square feet of lot area remains, and this is an insufficient area for four lots in the SF-7200 zone. Under a strict application of the regulations, Lots 11 and 12 have sufficient non-critical area for three houses permitted outright, although the total land area is enough for four under the applicable zoning. However, Lots 11 and 12 still have a total of 23,115 square feet of area outside the steep slope and buffer areas in which structures could be constructed.

SMC Section 25.09.260 provides a process for DPD to authorize the recovery of development credit in a single-family zone through an administrative conditional use review. The Director may approve, condition, or deny an application based upon a determination of whether the proposed recovery of development credit on the site meets the applicable criteria. Section 25.09.260 further allows clustering of structures where reductions in yards or lot sizes will accommodate recovery of development credit, encourage larger buffers, reduce impervious surfaces, and decrease the size of areas affected by development. An ECA Conditional Use decision is a Type II decision, subject to the provisions of SMC 23.76, and is appealable to the City Hearing Examiner. As proposed, the new residences and other land disturbing activity comply with the standards of SMC Section 25.09.180 A 1, which requires that development on areas over 40% slope be avoided whenever possible. This is achieved by concentrating development on the level westerly and central parts of existing Lots 11 and 12. As a cluster development, the proposal meets yard standards, since the yards are measured around the perimeters of Lots 11 and 12 from the lot lines of the existing lots. Lots 11 and 12 are defined as

“through” lots, with two front yards at either end of each lot, because they abut on two parallel streets, 39th Avenue Northeast and the unopened 40th Avenue Northeast right-of-way. For each “cluster” of two houses per lot, the required front yards of 20 feet and required side yards of five feet are all provided.

Since the applicants have indicated that they will likely apply for a unit lot subdivision, it is appropriate to consider the yard reductions that are required in the event of subdivision. The concentration of development necessitates the reduction of the rear yards for proposed Buildings 1 and 4 from the standard 25 feet or 20% of lot depth to six feet and twelve feet, respectively. Front yards for Buildings 2 and 3 would be reduced from the standard 20 feet to about six feet and fourteen feet, respectively. The proposed lot size for Building 1, in the event of future approval of a unit lot subdivision, would also be reduced from the minimum 7,200 square feet required in the zone to 5,700 square feet.

By clustering, with or without a unit lot subdivision, the proposal avoids all development in the steep slope and the standard 15-foot required buffer, except for a small portion of Building 2 on its east side. The Critical Areas Policies for steep slopes specifically indicate that the ECA Conditional Use was intended to allow recovery of development credit in steep slope areas, where the development standard of Section 25.09.180 A 1 is met.

ANALYSIS - ECA CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT

Section 23.42.042 of the Seattle Land Use Code authorizes review of conditional use permits according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. Section 25.09.260 of the ECA ordinance sets forth the review criteria for Administrative Conditional Use Permits [ACU] to recover development credit and permit clustered development in single-family zones. Applicable review criteria and supporting analysis follows:

- A. Up to full development credit on-site (determined by calculating the maximum number of lots allowed based on the underlying single-family zoning and size of the originating property) may be granted by the Director through an administrative conditional use permit, authorized under SMC Section 23.42.042, Conditional uses, in the Land Use Code.

The minimum lot size in this zone is 7,200 square feet. Existing Lots 11 and 12 have approximately 32,560 square feet of area (inclusive of the steep slope area and its buffer). The number of new residences proposed by this application is four, with a planned future unit lot subdivision of two lots into four. When the critical area and buffer are subtracted from the total lot area in calculating development credit, as required by SMC Section 25.09.240 D, only 23,115 square feet of non-critical lot area remains, which is less than the 28,800 square feet of lot area required for four lots (one house per lot). Thus, existing Lots 11 and 12 cannot meet the development standards for a short subdivision contained in SMC Section 25.09.240. However,

the conditional use provisions of Section 25.09.260, which incorporate the critical areas policies, allow recovery of development credit and reduction of yards and lot sizes through clustering as an alternative to strict application of Section 25.09.240 D. The applicant has therefore applied for an ECA administrative conditional use to both “recover” sufficient development credit to allow construction of four houses (the maximum allowed by the total lot area) and to allow clustering of the four houses by reducing the some of the rear and front yards. A contemplated future unit lot subdivision would also reduce one proposed lot below the minimum lot area required in the SF-7200 zone.

SMC Section 25.09.260 A allows recovery of development credit on a parcel of property provided that the criteria in that section are met.

Discussion of the criteria in subsection E (1-9) is followed by analysis of the clustering provisions of subsections F, G and H, and then by analysis of the general conditional use criteria of subsections B and C. Subsection D requires that DPD issue written findings of fact and conclusions to support its decision.

E. The Director may approve the transfer of development credit if it can be shown that the development would meet the following conditions and findings:

1. *The transfer of development credit shall not result in any significant increase of negative environmental impacts, including erosion, on the identified ECA and its buffer;*

As noted above, Section 25.09.180 A requires that development be avoided on steep slopes “whenever possible.” On property that is partly level and partly comprised of steep slope areas, as in the case of Lots 11 and 12, Section 25.09.180 A requires that development be concentrated in the level area. Examples of the transfer of development credit on pages 62 and 63 of the critical areas policies suggest that the “transfer” was generally expected to occur from the critical portion of a site to the noncritical portion. In the case of Lots 11 and 12, the application is to transfer development credit from the steep slope area and its buffer to the non-critical westerly and central portions of the property.

All proposed development will occur within the level area occupied by the existing house, or to the west of the existing house, and on other level land in the east half of Lot 12, to the east of the existing house footprint. The location of the new construction outside the critical area and buffer (except a small portion of proposed Building 2 within the buffer) will minimize erosion during construction. The impervious surfaces will be equipped with drainage infrastructure tight-lined to the storm drainage system on 39th Avenue Northeast, which will reduce runoff to the steep slope and therefore reduce the risk of erosion and superficial landslide. Limitation of land disturbing activity will be a condition of approval of the proposed development, as will the designation of the critical area and buffer on proposed Lot B as a nondisturbance area by ECA covenant. Submittal of an erosion control plan will be a condition to be met prior to issuance of any building permits.

Lots 11 and 12 outside of the presently developed area is currently covered with grass and a small boxwood hedge within the proposed construction sites, while the site is lined on the north and south sides by large trees and shrubs, and a five-foot hedge 103 feet in length on the west side. The vegetation to be removed from the site will include only existing grass and the boxwood hedge near the center of the site. Accordingly, the proposal, as conditioned according to this decision, will meet the first criterion for conditional use approval.

2. *The development shall be reasonably compatible with neighborhood characteristics. This shall include but not be limited to concerns such as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining;*

Lot sizes in the immediate neighborhood (particularly the 600-foot radius around Lots 11 and 12) range from a minimum of 4,800 square feet to a maximum of 38,024 square feet, according to King County Assessor's records, but most lots in the SF-7200 zone are close to the zone minimum, up to a few hundred square feet greater than the minimum. The proposal is to cluster four houses on two lots with a total area of 32,560 square feet, for an average area of one house per 8,140 square feet of land. If the proposed unit lot subdivision were approved, the lot sizes would exceed 7,200 square feet, except for one lot of 5,700 square feet. Thus, the development in terms of lot area would be well within the range of similar lots in the immediate neighborhood. There will be no loss of substantial vegetation from what is presently on Lots 11 and 12.

The proposed new houses will be two stories with attached two-car garages, similar in size and height to many nearby residences and comparable to typical newly built and remodeled homes in the Cedar Park area, particularly those that share the ridge on which Lots 11 and 12 are located. Proposed yards will generally conform to the Land Use Code except for reduced front and rear yards where the four houses will cluster in the center of Lots 11 and 12. Since the four proposed houses will face each other north to south within the existing lots, the reduced front and rear yards will function more like side yards for residents of the proposed houses. Actual lot coverage of the four structures will be well within the 35% total coverage limits permitted by the Land Use Code. The effect of the extent of lot coverage and of the yard reductions on the appearance of the proposed development with respect to the rest of the neighborhood will be no different than if two or three larger houses with accessory development were built on existing Lots 11 and 12 without discretionary conditional use approval.

The development will have no adverse effect on the pedestrian environment in the neighborhood. There will be standard 20-foot front yards facing 39th Avenue Northeast. The new houses will share one driveway with one curbcut, just as there is for the existing development. No significant increase in traffic will occur from four new houses within a cluster development with one shared driveway. The second criterion is met.

3. *In no case shall development credit be allowed for the area covered by an open water area of a wetland or riparian corridor.*

No development is proposed for an area covered by open water of a wetland or riparian corridor, so this criterion is met.

4. *The development shall retain and protect vegetation on designated undisturbed areas on and off site. Significant species or stands of trees shall be protected, and tree removal shall be minimized. Replacement and establishment of trees and vegetation shall be required where it is not possible to save trees.*

The two-story designs of the proposed new houses minimize the areas of the building footprints, and development will occur within existing lawn or building areas within the area of the site outside of the environmentally critical area. Twelve existing trees with diameters from 6 inches to 32 inches and nine large shrubs will be preserved. No significant trees will be removed or damaged as a result of the development, although it is acknowledged that trees have been removed from the subject property prior to this application for development. Removal of trees will be mitigated by revegetation within the steep slope area and by landscaping within the construction area for the houses. The 15-foot buffer area at the top of the steep slope will be protected by a temporary construction fence and maintained as a grass lawn. The applicants have further proposed planting of native trees and shrubs to replace trees previously removed from the site outside of the critical area. With conditions attached to this decision including a revegetation plan for the steep slope, establishing the vegetated steep slope area as a nondisturbance area, and a landscaping plan for the construction area, the fourth criterion is satisfied by the proposal.

5. *The ability of natural drainage systems to control the quality and quantity of stormwater runoff shall not be significantly impaired.*

All stormwater runoff from impervious surfaces will be directed to the approved discharge point at the street through a tight-lined system. A drainage control plan that complies with the City's Stormwater, Grading and Drainage Control Code is required as a condition of approval of the proposal. As conditioned, the fifth criterion is met.

6. *The development shall not adversely affect water quality and quantity, erosion potential, drainage, and slope stability of other ECAs located in the same drainage basin.*

The proposed development will not disturb the steep slope area. Thus, water quality is protected and slope stability maintained by limiting all new development to the level portion of the property. The development, conditioned by this decision and in compliance with City Codes, will not adversely affect other ECAs in the same drainage basin.

While the proposed development presents some risk of erosion during construction, the development must conform to the requirements of the Stormwater, Grading and Drainage Control regulations. An erosion and sediment control plan for the property employing Best Management Practices as outlined in DPD Director's Rule 16-00 will be required for the project. If constructed in conformity to City regulations and Best Management Practices, the

development will not adversely affect water quality, erosion, drainage, or slope stability. The sixth criterion is therefore satisfied.

7. *The development's site plan shall include measures to minimize potential negative effects of the development on the undeveloped portion of the site, including provision of natural barriers.*

The proposed development, at the building permit stage, is subject to the following ECA requirements: dry season grading; the preparation of a detailed construction schedule; approved temporary and permanent erosion control plans; a comprehensive drainage control plan or alternative as determined by DPD plan review at the time of a building permit application; ECA covenants; bonds; insurance; a non-disturbance fence; adherence to geotechnical recommendations for development, and a pre-construction meeting.

The proposed development maintains a 15-foot buffer at the top of the steep slope, which is an effective natural barrier to negative effects of development on the steep slope area. Drainage will be directed to the street, away from the critical area. A small portion of one proposed house, Building 2 on the applicants' site plan, would extend into the buffer a maximum of about nine feet in one small corner, but this intrusion has been determined to pose no risk of disturbance to the steep slope critical area based on information supplied by the applicants' geotechnical engineer. Subject to the requirements noted above, the seventh criterion will be met.

8. *Adequate infrastructure (streets and utilities) shall be available or will be provided; and*

Adequate infrastructure of streets and utilities are presently available. Thirty-ninth Avenue Northeast is a City street improved with paved roadway and a full complement of utilities. The eighth criterion is met.

9. *The Site Design Guidelines of Section 25.09.180C shall be followed for designated steep slope areas.*

Section 25.09.180 C 1 states that "Structures should be designed and placed on the hillside to minimize negative impacts, such as grading and land disturbing activity." By locating all new development on the level portion of the subject property, the steep slope and most of the 15-foot buffer will be protected from grading, land disturbing activity, and terracing. There will be no driveways or utilities passing through the steep slope. The project has been designed to maximize use of the undeveloped area on the property while protecting the critical area and buffer. Thus, the ninth criterion is met.

- F. *The Director may approve more than one (1) dwelling unit per lot and may approve smaller than required lot sizes and yards to accommodate recovery of development credit, and to encourage larger buffers, reduce impermeable surfaces, and decrease size of affected area. Full development credit on-site shall not be increased beyond that permitted by the underlying single-family zone.*

SMC Section 25.09.260.F authorizes the Director to approve more than one dwelling unit per lot as well as smaller yards and lot sizes than ordinarily required in order to accommodate recovery of development credit and to encourage larger buffers, reduce impermeable surfaces, and decrease size of affected areas. In order to develop four houses on Lots 11 and 12 without encroaching on the steep slope or most of the steep slope buffer, the applicant proposes a cluster development of four houses on two lots. In the event of approval of a future unit lot subdivision, there would be a reduction in rear yards for proposed Buildings 1 and 4 from the standard 25 feet or 20% of lot depth to six feet and twelve feet, respectively. Front yards for Buildings 2 and 3 would be reduced from the standard 20 feet to about six feet and fourteen feet, respectively. The proposed lot size for Building 1, in the event of a unit lot subdivision, would also be reduced from the minimum 7,200 square feet required in the zone to 5,700 square feet. All other development standards of the Land Use Code will be met for all four proposed houses. The reduced yards and potential reduced lot size are reasonable in order to avoid disturbance to the critical area. The proposed houses will retain 20-foot-deep front yards facing 39th Avenue Northeast, as well as setbacks substantially greater than 25 feet from easterly lot line fronting on the unopened 40th Avenue Northeast right-of-way (and meeting yard standards for a cluster development if there is no future unit lot subdivision). Full development credit on existing Lots 11 and 12, which have a total of 32,60 square feet of area, would be four houses, so the proposal to demolish one existing house and construct four new houses does not increase development credit on the site beyond what is permitted by the underlying zoning.

G. The Director may require that structures be located on the site in order to preserve or enhance topographical conditions, adjacent uses and the layout of the project and to maintain a compatible scale and design with the surrounding community. In order to approve clustered dwelling units in all environmentally critical areas, the following criteria shall be met:

1. *Clustering of units shall help to protect the following critical areas: riparian corridors, wetlands and steep slopes;*
2. *Clustering of units shall require siting of structures to minimize disturbance of the environment;*
3. *Clustering of units shall help to protect priority species or stands of mature trees;*
4. *Clustering of units shall ensure maximum retention of topographic features;*
5. *Clustering of units shall limit location of access and circulation to maximize the protection of an area's natural character and environmental resource;*
6. *Clustering of units shall help protect the visual continuity of natural greenery, tree canopy, and wildlife habitat;*

7. *Clustering of units shall not have an adverse impact on the character, design and scale of the surrounding neighborhood; and*
8. *Clustering of units shall promote expansion, restoration or enhancement of a riparian corridor and its buffer, a wetland and its buffer or a steep-slope area and its buffer*

Most of the clustering criteria have been discussed in the analysis of the recovery of development credit. The subject cluster will protect the steep slope area on the site by concentrating all proposed new developmental coverage outside of the critical area and most of the required 15-foot buffer. By concentrating the new development on the level portion of the site, the project minimizes disturbance of the environment and will not impact the steep slope. The proposal will retain the topographic features on the remainder of the lot. Access and circulation to all proposed structures will be from a presently dedicated street right-of-way through one driveway and curbcut that will be shared by all houses. Although additional impervious surface will be added in the non-critical portion of Lots 11 and 12, it is well within the coverage limits of the Land Use Code. Thus, the development as proposed will not affect the area's natural character and environmental resources.

Development will be limited to the existing level area in the westerly part of the property, and existing trees and vegetation now on site, particularly within the critical area, will be preserved. Additional planting will include a revegetation plan for the steep slope and landscaping within the building construction area using native Northwest tree and shrub species. With the imposition of revegetation and landscaping plans, the proposal suitably protects the visual continuity of existing natural greenery, tree canopy, and wildlife habitat. As previously described, the four proposed houses and lot sizes are of comparable size and footprint to many other houses in the immediate neighborhood, and will therefore not have an adverse impact on neighborhood character, design or scale. The location of proposed and existing development within the non-critical westerly part of existing Lots 11 and 12 represents the best area for construction with no disturbance of the steep slope critical areas and minimal disturbance to buffers, while minimizing grading or other land disturbing activity.

H. Additional Conditional Use Provisions for Steep Slopes and Steep-slope Buffers.

1. *In steep-slope areas and their buffers, the Director may allow clustering on the steep-slope portions of the site when the site is predominantly characterized by steep slopes. However, the preference shall be to cluster away from steep-slope and buffer areas.*
2. *The Director shall require clear and convincing evidence that the clustering criteria and findings of this subchapter are met when a transfer in development credit within a steep-slope area is also characterized by or adjacent to:*
 - a. *A wetland over fifteen hundred (1,500) square feet in size, or a stream or creek designated as a riparian corridor; or*

- b. *A large (over five (5) acres) undeveloped steep-slope system; or*
- c. *Areas designated by the Washington Department of Wildlife as urban natural open space habitat areas or areas with significant tree cover providing valuable wildlife habitat.*

All existing and proposed development will occur on the non-critical westerly and central portions of Lots 11 and 12. There is no clustering within the existing steep slope area and all clustering will be outside the area of steep slope and most of the steep slope buffer. Criterion H.1 is satisfied. Criterion H.2 (a-c) is not applicable, since none of the features described are present on or adjacent to Lots 11 and 12.

- B. The Director may approve, condition or deny an application for an administrative conditional use. The Director's decision shall be based on a determination of whether the proposed transfer of development credit within the site meets the criteria for allowing the specific conditional use and whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

As discussed above, the proposed transfer of development credit and clustering within the site meets the conditional use criteria for approval. As proposed, and subject to the conditions of approval of this decision, the development would not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which Lots 11 and 12 are located.

- C. In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions deemed necessary for the protection of other properties in the zone or vicinity in which the property is located.

Conditions have been included to mitigate potential adverse negative impacts. These conditions are set forth following the short subdivision and SEPA analysis below.

DECISION – Administrative Conditional Use

The proposal to recover development credit is **CONDITIONALLY GRANTED.**

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist. This information, along with the experience of the lead agency in similar situations, forms the basis for this analysis and decision. Short- and long-term adverse impacts are anticipated from the proposal.

The SEPA Overview Policy (SMC 25.05.665.D) states “where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to limitations (see below under Long-term Impacts). Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Stormwater, Grading and Drainage Control Code (soil erosion); and Building Code (construction standards). Compliance with these codes and ordinances will be adequate to achieve sufficient mitigation of identified adverse impacts.

Under SMC Section 25.05.908 B, the scope of environmental review within critical areas is limited to documenting that the proposal is consistent with ECA regulations, SMC Chapter 25.09, and to evaluating potentially significant impacts on the environmentally critical areas resources not adequately addressed in the ECA Policies or the requirements of Chapter 25.09. The proposal, as conditioned by this decision, is determined to be consistent with ECA regulations. Potentially adverse impacts are further discussed below.

Short-term Impacts

The following temporary or construction-related impacts are expected: increased soil erosion and sedimentation during general site work; increased runoff; and tracking of mud onto adjacent streets by construction vehicles. Due to the temporary nature and limited scope of these impacts, they are not considered significant (SMC Section 25.05.794).

Earth (slope stability) and erosion

There is a potential for erosion during excavation of the proposed building footprints. The applicant will follow recommendations from the soils engineer and provide landscape barriers at the top of the steep slope area. Pursuant to these proposals, and if the requirements of Director’s Rule 3-93 and 16-00 (the latter for implementation of Best Management Practices) and Environmentally Critical Areas requirements are complied with, no additional mitigation is necessary.

Long-term Impacts

Long-term or use-related impacts are also anticipated from the proposal: increased surface water runoff from greater site coverage by increased impervious surfaces; and increased demand on public services and utilities. These long-term impacts are not expected to be significant.

The expected long-term impacts are typical of single family residential development and are expected to be mitigated by the City's adopted codes and/or ordinances. Specifically these applicable codes and ordinances are: Building Code requirements and ECA regulations (to ensure that proposed development will be constructed in a safe manner); and the Stormwater, Grading and Drainage Control Code (storm water runoff from additional site coverage by impervious surface). Other impacts not noted here are not sufficiently adverse to warrant further mitigation by conditioning.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).

[] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS - ECA CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT:

Conditions of Approval Prior to Issuance of a Master Use Permit

1. Record a covenant that restricts development to the area outside of the ECA Steep Slope and required buffer area. The covenant shall be in the form given to the applicant by DPD.
2. Permanent visible markers along the top of the steep-slope buffer to delineate the buffer no build area must be shown and described on the plat prior to recording. The markers shall be either reinforcing steel or metal pipe driven securely into the ground with a brass cap affixed to the top similar to survey monuments. The brass cap shall be visible at the ground surface and indicate the purpose of the marker. Markers shall be placed at all points along the buffer delineation where the buffer changes direction from a straight line, exclusive of the exempted access area. Markers must be in place before issuance of this Master Use permit.
3. Both a landscape plan and revegetation plan shall be submitted, showing proposals for revegetation of disturbed areas and specific landscaping proposals for the non-critical developable area of Lots 11 and 12 with native plant species, including types of plants and other requirements as specified in DPD Director's Rule 13-92, and including

replacement of the removed trees. The plan shall be subject to review and approval by DPD.

Nonappealable ECA conditions

Conditions of Approval Prior to Issuance of Any Construction Permits

The owner and/or responsible party shall:

1. Submit for approval by DPD a drainage control plan prepared by a licensed civil engineer meeting the requirements of the City's Stormwater, Grading and Drainage Control Code.
2. Show on the site plan complete calculations for development coverage, impervious surface area, and construction activity areas, noting areas and percentages of site;
3. Show on the site plan location of grading activities, including final grade contours, and drainage control facilities;
4. Show on the site plan location of existing utilities and proposed methods/locations of connection(s) to these services as they relate to the ECAs;
5. Show on the site plan the location of permanent ECA markers;
6. Provide an erosion and sediment control plan, employing Best Management Practices, to minimize erosion on and off site. The plan shall be reviewed and approved by DPD.
7. Submit a sanitary sewer plan for approval by DPD.
8. Building plans must demonstrate that there will be no direct access to the steep slope area from the houses.

CONDITIONS - SEPA

None required.

Signature: _____ (signature on file) Date: April 1, 2004
William K. Mills, Land Use Planner
Department of Planning and Development,
Land Use Review Services

WKM:bg

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